

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

January 7, 2004 Session

WILLIAM OWEN BARBER v. AMELIA DIANNE BARBER CHAPMAN

Appeal from the Circuit Court for Davidson County

No. 02D-1411 Muriel Robinson, Judge

No. M2003-00378-COA-R3-CV - Filed February 23, 2004

Mother and Father divorced in South Carolina in 1989. Father gained custody of parties' two minor children. Mother was ordered to pay child support. Subsequently, both parties left South Carolina with Mother living in Tennessee and Father living in Texas. In 2002, the parties entered into an agreed order registering the South Carolina divorce decree in the Circuit Court for Davidson County, Tennessee pursuant to Tenn. Code Ann. § 36-6-229. Father then filed a petition for contempt asserting that Mother had failed to make the last twenty-four child support payments. The trial court granted Father's petition, ordering Mother to pay \$10,490.67, holding Mother in criminal contempt and sentencing her to thirty days in jail. Mother filed a motion to alter or amend, asserting that the trial court lacked jurisdiction and that the punishment was excessive. Mother's motion was denied and this appeal followed. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed and Remanded**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and PATRICIA J. COTTRELL, J., joined.

Dan R. Alexander, Nashville, Tennessee, for the appellant, Amelia Dianne Barber Chapman.

Martin A. Kooperman, Nashville, Tennessee, for the appellee, William Owen Barber.

OPINION

William Owen Barber (Father) and Amelia Dianne Barber Chapman (Mother) divorced in South Carolina in 1989. Father was granted custody of the parties' two minor children, Amelia Ashley Barber (born August 5, 1982) and William Stephen Barber (born December 22, 1984), and

Mother was ordered to pay child support. Since the divorce, all interested parties left South Carolina. Mother currently resides in Antioch, Tennessee, and Father resides in Texas.¹

On June 13, 2002, Father filed a petition to register the Dorchester County, South Carolina divorce decree in Davidson County, Tennessee, pursuant to Tenn. Code Ann. § 36-6-229. The parties subsequently entered into an agreed order to register the foreign decree in Davidson County, Tennessee, obviating the need for a hearing. The Agreed Order to Register Foreign Decree stated, “[B]oth the Petitioner/Father and Respondent/Mother shall have all the rights and responsibilities as if this order had been initially entered by Courts in the State of Tennessee.”

Shortly after filing the agreed order registering the South Carolina decree, Father filed a petition for criminal contempt, alleging that Mother had failed to make the last twenty-four² child support payments of \$435.40 each, totaling \$10,449.60. Father asserted that Mother’s failure to make these payments was wilful and deliberate and requested that Mother be sentenced to ten days in jail for every month she failed to make the child support payments, up to 180 days. Mother filed her answer to the petition on the day of the hearing, denying that she wilfully and deliberately failed to make the payments. Mother alleged that she should not be held in contempt because her income had decreased, and one of the parties’ children was emancipated on August 5, 2000 and, therefore, was not entitled to child support. As an affirmative defense, Mother argued that the amount Father was seeking was in excess of what Mother was legally obligated to pay.³

At the October 31, 2002 hearing on Father’s Petition for Contempt, the trial judge held:

[T]he Respondent/Mother is behind in her child support by 24 payments or two years and the Father is entitled to a judgment against the Mother in the amount of \$10,490.67. The Court further finds that the Mother is hereby in wilful criminal contempt of court for failing to pay 24 consecutive child support payments to the Father as per the most recent Court order. Further, the Court finds there was no agreement to modify the amount of child support payments to the Father upon one

¹The Petition to Register a Foreign Decree, filed June 13, 2002, indicates that Father resides in Georgia, however the more recent transcript from the October 31, 2002 hearing and the oral argument indicate that Father now lives in Texas.

²Although the record does not specifically set forth how many of these twenty-four violations occurred in Tennessee, we are able to deduce that at least three of the twenty-four violations occurred after the registration of the South Carolina order in Tennessee. Furthermore, the record indicates that Mother had missed the last twenty-four child support payments of \$435.40 each, totaling \$10,449.60. Since monthly support was payable every two weeks, it is more accurate to state that Mother had missed the last forty-eight payments, still totaling \$10,449.60. In the interest of consistency, we will follow the trial court’s lead and refer to the \$10,449.60 arrearage as twenty-four missed payments.

³At the March 22, 1996 hearing before Judge Alvin Biggs in Dorchester County, South Carolina, when Mother’s payments were increased to \$435.40 per month, the court held, “Defendant shall pay child support to the Plaintiff in the amount of . . . \$435.40 Dollars, payable every two (2) weeks, beginning April 15, 1996, and continuing until further Order of the Court.” Mother and Father agree that this was the most recent order setting the amount of child support.

of the parties [sic] children's emancipation. Therefore, the Mother is hereby sentenced to thirty (30) days in the Metropolitan Davidson County Jail for criminal contempt of court. . . . The Court further found that regular child support payments should continue in the amount of \$435.40 per month plus an additional \$100.00 to be credited towards the arrearage judgment for a total payment of \$535.40 per month to be paid directly to the Father.⁴

The order finding Mother in criminal contempt was entered on December 2, 2002. Mother then filed a motion to alter or amend the judgment of the trial court pursuant to Tenn. R. Civ. P. 59.04, or alternatively, a motion for a new trial pursuant to Tenn. R. Civ. P. 59.06, arguing that the Circuit Court of Davidson County had no jurisdiction over conduct that occurred outside the state of Tennessee and prior to the time the South Carolina divorce decree was registered in Tennessee. On December 23, 2002, Mother filed a motion to terminate child support since both of her children were now emancipated.⁵ The trial court signed and entered a handwritten order on February 7, 2003 which denied the motion to alter or amend the judgment and granted the motion to terminate future child support but required Mother to continue to pay the same monthly amount until the arrearage was paid in full.⁶ Mother filed an appeal from the order denying the motion to alter or amend and requiring payment of child support arrearages.

Standard of Review

Since this was a non-jury case, our review is *de novo* on the record, accompanied by a presumption of correctness of the findings of fact, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). However, no presumption of correctness attaches to the trial court's conclusions of law. *Nelson v. WalMart Stores, Inc.*, 8 S.W.3d 625, 628 (Tenn. 1999).

In a criminal contempt case, the guilt of the accused must be established beyond a reasonable doubt. *Black v. Blount*, 938 S.W.2d 394 at 398 (Tenn. 1996) (citing *Robinson v. Air Draulics*

⁴The court also awarded Father attorney fees of \$1,720.00.

⁵Mother had filed a motion on December 3, 2002 to terminate child support as to Stephen Barber, the younger of her two children who would turn 18 on December 23, 2002 and had left school. That motion was granted effective December 22, 2002. Why a motion had not been filed earlier to terminate child support for the older child, Amelia Ashley Barber, is not explained. The older child had turned 18 in August of 2000, and was 20 years old when the motion was filed.

⁶The order reads, "After hearing proof from all sides the Court . . . granted the Motion to terminate the child support of . . . Amelia Ashley Barber born August 5, 1982." The order incorrectly identified Amelia as the "youngest" child. The trial court also ordered that the mother continue to pay \$435.40 until the previous arrearage is paid in full. The transcript from the hearing indicates that Father's attorney did not oppose the proposed modification. Father's attorney stated, "I don't oppose his modification, because the youngest child [William Stephen Barber] has now reached 18." The record reveals that William Stephen Barber's child support was terminated effective his eighteenth birthday, December 22, 2002, as requested in Mother's Motion to Terminate, filed December 3, 2002. Stephen was no longer in high school, having dropped out in May 2002.

Engineering Co., 377 S.W.2d 908, 912 (Tenn. 1964). However, on appeal, individuals convicted of criminal contempt lose their presumption of innocence and must overcome the presumption of guilt. “Appellate courts do not review the evidence in a light favorable to the accused and will reverse criminal contempt convictions only when the evidence is insufficient to support the trier-of-fact’s finding of contempt beyond a reasonable doubt.” *Thigpen v. Thigpen*, 874 S.W.2d 51, 53 (Tenn. Ct. App. 1993) (citing Tenn. R. App. P. 13(e)). Furthermore, appellate courts review a trial court’s decision of whether to impose contempt sanctions using the more relaxed abuse of discretion standard of review. *Hawk v. Hawk*, 855 S.W.2d 573, 583 (Tenn. 1993).

Analysis

Mother asserts that the trial court did not have jurisdiction under Tenn. Code Ann. § 36-6-229 *et seq.* to impose the sanction of criminal contempt and that the contempt, if any, occurred in South Carolina. She emphasizes the fact that at the time the trial court held her in contempt, there were no orders from a Tennessee court requiring her to do anything, other than appear. Her argument is based on a line of cases, as well as a 1998 Tennessee Attorney General opinion, standing for the premise that only the court against which the contempt is committed has the authority or jurisdiction to hear it. *Mayhew v. Mayhew*, 376 S.W.2d 324, 328 (Tenn. Ct. App. 1964) (citing *Chaffin v. Robinson*, 213 S.W.2d 32 (Tenn. 1948); *Churchwell v. Callens*, 252 S.W.2d 131 (Tenn. Ct. App. 1952)); 98 Tenn. Op. Atty. Gen. 060 (1998). Furthermore, Mother contends that even if jurisdiction is established, the punishment is excessive in that the support obligation extended past the time the minor children reached the age of majority. Father insists that Mother had not been relieved by court order of her obligation to pay child support and that once the South Carolina decree was registered in Tennessee, the Tennessee court was vested with the authority to hold Mother in criminal contempt for violation of the registered decree due to her non-payment of child support.

Mother erroneously asserts that the trial court was not authorized to use contempt as a means to enforce the domesticated divorce decree. The South Carolina decree, which was properly registered under Tenn. Code Ann. § 36-6-229 *et seq.*, and the agreed order registering the foreign decree, gave the Circuit Court for Davidson County jurisdiction over this matter and the parties and, therefore, the authority to hold Mother in criminal contempt for failing to make child support payments. Enforcement of a foreign decree after it is registered in Tennessee is controlled by Tenn. Code Ann. § 36-6-230, which provides:

- (a) A court of this state may grant *any relief normally available under the law of this state* to enforce a registered child-custody determination made by a court of another state. (emphasis added)
- (b) A court of this state shall recognize and enforce, but may not modify, except in accordance with this part, a registered child-custody determination of a court of another state.

Our courts are to give statutes their plain and ordinary meaning. *Henry v. White*, 250 S.W.2d 70, 72 (Tenn. 1952); *Hawks v. City of Westmoreland*, 960 S.W.2d 10, 16 (Tenn. 1997); *Lucchesi v. Alcohol and Licensing Com'n of City of Memphis*, 70 S.W.3d 49, 55 (Tenn. Ct. App. 2001). In *Lavin v. Jordon*, the Tennessee Supreme Court stated, “Where the language of the statute is clear and unambiguous, then this Court will give effect to the statute according to the plain meaning of its terms.” 16 S.W.3d 362, 365 (Tenn. 2000) (citing *State ex rel. Earhart v. City of Bristol*, 970 S.W.2d 948, 951 (Tenn. 1998)). The statute controlling the enforcement of foreign decrees registered in Tennessee is unambiguous. It provides that Tennessee shall not only “recognize” but shall “enforce” a foreign decree, once registered in Tennessee, and that “any relief normally available” to enforce a Tennessee decree shall be available to enforce a properly registered foreign decree. Criminal contempt is the type of relief that is normally available to enforce a Tennessee child support decree; therefore, criminal contempt was available to enforce the decree from South Carolina once it was properly registered in Tennessee.

Furthermore, the parties’ August 5, 2002 agreed order registering the South Carolina decree in Tennessee, expressly authorized the trial court to enforce the provisions of the registered decree. The agreed order states that, upon registration of the South Carolina order in Tennessee, both Mother and Father “shall have all the rights and responsibilities as if this order had been initially entered by Courts in the State of Tennessee.” If the parties’ divorce had been granted in Tennessee, the trial court would have had the authority to use its criminal contempt powers to enforce the decree. Thus, once the South Carolina decree was registered in Tennessee, it became an order of the Tennessee court; therefore, the Tennessee court was empowered to enforce the decree by “any relief normally available” including, without limitation, criminal contempt.

In addition to challenging the trial court’s authority to use its contempt powers to enforce a foreign decree, Mother challenges the authority of the Circuit Court for Davidson County to hold her in contempt for acts and/or omissions that occurred prior to registration of the foreign decree in Tennessee. Father’s contempt petition requested that Mother be sentenced to up to 180 days in jail. The court sentenced Mother to thirty days in jail. At the October 31, 2002 contempt hearing Mother admitted that she failed to make the last twenty-four child support payments. In that the hearing occurred on October 31, 2002, it is obvious that at least three of the non-payments occurred after the registration of the foreign decree. Though the trial court did not state whether the thirty day sentence was for the three contemptuous acts of non-payment of child support following registration of the foreign decree or whether it was for all twenty-four, such is immaterial. Tenn. Code Ann. § 36-6-230 and the agreed order empowered the trial court to use its contempt powers to enforce the decree without regard to whether the contemptuous acts occurred before or after the registration of the decree. Moreover, under the facts at issue, it was not an abuse of discretion for the trial court to assess ten days for each of the three non-payments that occurred after the foreign decree was registered in Tennessee. Under either interpretation, we find that the trial court did not abuse its discretion by imposing a sentence of thirty days for non-payment of child support.

Mother further argues that the sentence is excessive because one of the children had been emancipated since August 2000. Mother's argument is misplaced because it is inconsequential whether she was obligated to pay support for one child or two or whether she was obligated to pay \$435 per month or \$200 per month. The pertinent fact is that she failed to make any child support payment for twenty-four months. Accordingly, Mother is in default for non-payment of child support and the trial court acted within its discretion by finding her in contempt and imposing a sentence of thirty days for non-payment of child support.

Therefore, we hold that the trial court had the authority to enforce the South Carolina decree once it was properly registered in Tennessee and to use criminal contempt as a remedy to enforce the child support obligations of Mother. We further hold that the trial court did not abuse its discretion by imposing a sentence of thirty days in jail for Mother's failure to make twenty-four consecutive payments of child support.

The decision of the trial court is affirmed and the matter is remanded for such proceedings as may be necessary. Costs of this appeal are taxed to Appellant, Amelia Dianne Chapman Barber and her surety.

FRANK G. CLEMENT, JR., JUDGE